IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

In re: National Hockey League Players' Concussion Injury Litigation This Document Related to: ALL ACTIONS	)	MDL Docket No. 14-2551 (SRN)

MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION TO ESTABLISH A QUALIFIED SETTLEMENT FUND

Co-Lead Plaintiffs' Counsel, on behalf of all Settling Persons,[1] as defined in 1.45 of the Settlement Agreement, move this Court for an Order to aid in the efficient processing and administration of the Settlement Agreement between the NHL and Co-Lead Plaintiffs' Counsel, to resolve the claims allegedly arising from, related to, or in connection with playing ice hockey while employed by any of the Member Clubs of the NHL as alleged in this multidistrict litigation. The NHL does not oppose this motion.

Co-Lead Plaintiffs' Counsel seek an Order:

(1) establishing a qualified settlement fund pursuant to the terms of the Settlement Agreement and within the meaning of section 468B of the Internal Revenue Code

[1] Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the settlement agreement with an Execution Date of November 6, 2018, as amended on March 20, 2019, entered into by the NHL and Co-Lead Plaintiffs' Counsel, which among other things is intended to resolve the federal multidistrict litigation pending in the United States District Court for the District of Minnesota, *In re: National Hockey League Players' Concussion Injury Litigation,* MDL No. 14-2551 (SRN) (the "Settlement Agreement").

of 1986, as amended ("Code") and Treasury Regulation sections 1.468B-1, *et seq*. ("Regulations"), which qualified settlement fund shall be named the "NHL Retired Players Settlement Agreement Qualified Settlement Fund" or "the QSF;"

(2) retaining continuing jurisdiction and supervision over the QSF; and

(3) determining certain matters with respect to the administration of the QSF.

Pursuant to sections 1.19, 2.5, 3.11, and 10.4 of the Settlement Agreement, the Parties have agreed to establish the QSF under the Code, subject to the Court's approval. The Settlement Agreement sets forth the allocation distributions and criteria for determining Settling Persons' individual award amounts, although the exact amounts are not fully known at this time. Payment of the required settlement amounts into a qualified settlement fund will afford Settling Persons' Counsel time to identify and resolve liens and/or subrogation rights, while knowing that the funds are available and held by a third-party. The funds to be held in the QSF are the sole property of the QSF. Until such times as the funds are distributed from the QSF, the Settling Persons shall not possess any rights to demand or receive any portion of the escrow funds and shall not possess any right to mortgage, pledge, or encumber the same in any manner.

The Court should approve the establishment of the QSF as a "qualified settlement fund" under the Code and Regulations, subject to the Court's continuing jurisdiction, as it is in the best interests of the Parties and the Settling Persons covered by the Settlement Agreement. Without approval by and continuing jurisdiction of the Court, the QSF would neither satisfy the terms of the Settlement Agreement, nor satisfy the requirements of section 1.468A-1(c)(1) of the Regulations, which requires that a qualified settlement fund be "established pursuant to an order of, or is approved by, the United States, any state

(including the District of Columbia) territory, possession, or political subdivision thereof, or any agency or instrumentality (including a court of law) … and is subject to the continuing jurisdiction of that governmental authority.” Further, the QSF will qualify as a “qualified settlement fund” under section 468B of the Code and sections 1.4668B-1, *et seq.* of the Regulations because (1) the QSF is being established subject to the approval of the Court and will be operated pursuant to the terms and conditions of an escrow agreement that will be entered into between Co-Lead Plaintiffs’ Counsel, Sapientia Law Group LLC (“Sapientia”) in its capacity as the Claims Administrator, and The Huntington National Bank (“Huntington”), in its capacity as the escrow agent; (2) the QSF will be subject to the continuing jurisdiction and supervision of the Court; (3) the QSF is being established to resolve or satisfy alleged torts or violations of law or in connection with the Settling Persons playing ice hockey while employed by any of the Member Clubs of the NHL; and (4) the QSF will be an escrow account, and its assets will be segregated from the general assets of the transferor, in this case the NHL, and deposited therein. The escrow agreement provides for accounts to be established and used solely for the permissible purposes in administering the QSF pursuant to the Settlement Agreement. The QSF, including all the sub-accounts which may be established, together constitute a single qualified settlement fund.

Co-Lead Plaintiffs’ Counsel has selected Sapientia as the Claims Administrator and tasked it and Amy Gernon, an attorney at Sapientia, with administering the QSF pursuant to the terms, conditions, payment processes, and restrictions of the Settlement Agreement and the escrow agreement. Sapientia shall serve as the administrator within the meaning of

Treasury Regulations § 1.468B-2(k). Co-Lead Plaintiffs' Counsel requests that Ms. Gernon and Sapientia administer the QSF without bond. Ms. Gernon and Sapientia shall, upon request, prepare and deliver to the Court such reports involving the administration of the QSF as the Court may request from time to time.

Co-Lead Plaintiffs' Counsel have named Huntington as the Escrow Agent and selected Huntington as the financial institution that will hold the Settlement Funds within the meaning of section 1.46B-2(k)(3) of the Regulations and pursuant to an escrow agreement. The funds held by Huntington in the QSF shall be held in the custody of Huntington for the benefit of and titled in the legal name of the QSF and invested exclusively in instruments or accounts backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation ("FDIC") or (b) secured by instruments backed by the full faith and credit of the United States Government. The funds of the QSF shall be invested such that the following investment policy is implemented: (1) safety of principal and (2) zero bank liability exposure. The Escrow Agent shall reinvest the proceeds of these instruments or accounts as they mature in similar instruments or accounts at their then-current market rates. The funds in the QSF shall be distributed in accordance with written instructions given by the Claims Administrator only pursuant to and in accordance with the terms of the Settlement Agreement. Co-Lead Plaintiffs' Counsel and Sapientia retain the right to remove Huntington as the Escrow Agent and may designate a replacement

escrow agent in accordance with the terms of the Settlement Agreement and an escrow agreement.

Co-Lead Plaintiffs' Counsel has conferred with the counsel for the NHL, and the NHL has authorized Co-Lead Plaintiffs' Counsel to represent to the Court that the NHL consents to the granting of this motion.

Conclusion

For the reasons stated above, Co-Lead Plaintiffs' Counsel respectfully requests that the Court approve the establishment of the NHL Retired Players Settlement Agreement Qualified Settlement Fund as a qualified settlement fund and enter an Order in the form submitted herewith.

Dated: April 4, 2019

s/ Brian C. Gudmundson

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